

## **CHAPTER 39-30**

### **MOTOR VEHICLE CHOP SHOPS**

**39-30-01. Definitions.** As used in this chapter, unless the context or subject matter otherwise requires:

1. "Chop shop" means any building, lot, or other premises where one or more persons knowingly, as defined by section 12.1-02-02, engage in altering, destroying, disassembling, dismantling, reassembling, or storing any motor vehicle, or motor vehicle part known to be illegally obtained by theft, fraud, or conspiracy to defraud, in order to either:
  - a. Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number of the motor vehicle or motor vehicle part, in order to misrepresent the identity of the motor vehicle or motor vehicle part, or to prevent the identification of the motor vehicle or motor vehicle part; or
  - b. Sell or dispose of the motor vehicle or motor vehicle part.
2. "Motor vehicle" includes every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, which is self-propelled or which may be connected to and towed by a self-propelled device, and includes any and all other land-based devices that are self-propelled but which are not designed for use upon a highway, including farm machinery and construction equipment.
3. "Person" includes a natural person, company, corporation, limited liability company, unincorporated association, partnership, professional corporation, professional limited liability company, and any other legal entity.
4. "Unidentifiable" means that the uniqueness of a motor vehicle or motor vehicle part cannot be established by either expert law enforcement investigative personnel specially trained and experienced in motor vehicle theft investigative procedures and motor vehicle identification examination techniques, or by expert employees of not-for-profit motor vehicle theft prevention agencies specially trained and experienced in motor vehicle theft investigation procedures and motor vehicle identification examination techniques.
5. "Vehicle identification number" means a number or numbers, a letter or letters, a character or characters, a datum or data, a derivative or derivatives, or a combination or combinations thereof, used by the manufacturer or the department of transportation for the purposes of uniquely identifying a motor vehicle or motor vehicle part. The term includes a number or numbers, a letter or letters, a character or characters, a datum or data, a derivative or derivatives, or a combination or combinations thereof.

**39-30-02. Violations and penalties.**

1. It is a class B felony if any person knowingly, as defined in section 12.1-02-02, and with intent that a violation of subsection 2 be committed:
  - a. Owns, operates, or conducts a chop shop;
  - b. Transports any motor vehicle or motor vehicle part to or from a location knowing it to be a chop shop; or
  - c. Sells, transfers, purchases, or receives any motor vehicle or motor vehicle part either to or from a location knowing it to be a chop shop.

2. Any person who knowingly, as defined in section 12.1-02-02, alters, counterfeits, defaces, destroys, disguises, falsifies, forges, obliterates, or knowingly removes a vehicle identification number, with the intent to misrepresent the identity or prevent the identification of a motor vehicle or motor vehicle part, is guilty of a class B felony.
3.
  - a. Any person who buys, disposes, sells, transfers, or possesses a motor vehicle or motor vehicle part, with knowledge that the vehicle identification number of the motor vehicle or motor vehicle part has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed, is guilty of a class B felony.
  - b. The provisions of subdivision a do not apply to a motor vehicle scrap processor who, in the normal legal course of business and in good faith, processes a motor vehicle or motor vehicle part by crushing, compacting, or other similar methods, provided that any vehicle identification number is not removed from the motor vehicle or motor vehicle part prior to or during any such processing.
  - c. The provisions of subdivision a do not apply to any owner or authorized possessor of a motor vehicle or motor vehicle part which has been recovered by law enforcement authorities after having been stolen or where the condition of the vehicle identification number of the motor vehicle or motor vehicle part is known to or has been reported to law enforcement authorities. It is presumed that law enforcement authorities have knowledge of all vehicle identification numbers on a motor vehicle or motor vehicle part which are altered, counterfeited, defaced, disguised, falsified, forged, obliterated, or removed, when law enforcement authorities deliver or return the motor vehicle or motor vehicle part to its owner or authorized possessor after it has been recovered by law enforcement authorities after having been reported stolen.
4. No prosecution may be brought, and no person may be convicted, of any violation under this section, if acts of the person otherwise constituting a violation were done in good faith in order to comply with the laws or regulations of any state or territory of the United States or of the federal government of the United States.
5. The sentence imposed upon a person convicted of any violation of this section may not be reduced to less than four years imprisonment for a second conviction of any violation of this section, or less than eight years for a third or subsequent conviction of any violation of this section, and no sentence imposed upon a person for a second or subsequent conviction of any violation of this section may be suspended or reduced until the person has served the minimum period of imprisonment provided in this section. A person convicted of a second or subsequent violation of this section is not eligible for probation, parole, furlough, or work release.
6.
  - a. In addition to any punishment, a person who violates this section, must be ordered to make restitution to the lawful owner or owners of the stolen motor vehicle or vehicles or the stolen motor vehicle part or parts, or to the owner's insurer to the extent that the owner has been compensated by the insurer, and to any other person for any financial loss sustained as a result of a violation of this section.

As used in this section, "financial loss" includes loss of earnings, out-of-pocket and other expenses, repair and replacement costs, and claims payments. As used in this section, "lawful owner" includes an innocent bona fide purchaser for value of a stolen motor vehicle part who does not know that the motor vehicle or part is stolen or an insurer to the extent that the insurer has compensated a bona fide purchaser for value.

- b. The court shall determine the extent and method of restitution. In an extraordinary case, the court may determine that the best interests of the victim

and justice would not be served by ordering restitution. In any such case, the court shall make and enter specific written findings on the record concerning the extraordinary circumstances presented which militated against restitution.

### **39-30-03. Seizure of equipment.**

1. Any tool, implement, or instrumentality including a motor vehicle or motor vehicle part, used or possessed in connection with any violation of section 39-30-02 may be seized by a member of a state or local law enforcement agency upon process issued by any court of competent jurisdiction.
2. Seizure of property described in subsection 1 may be made by a member of a state or local law enforcement agency without process:
  - a. If in accordance with any applicable law or regulation;
  - b. If the seizure is incident to inspection under an administrative inspection warrant;
  - c. If the seizure is incident to search made under a search warrant;
  - d. If the seizure is incident to a lawful arrest;
  - e. If the seizure is made pursuant to a valid consent to search;
  - f. If the property seized has been the subject of a prior judgment in favor of the state in a criminal proceeding or in an injunction or forfeiture proceeding under section 39-30-05; or
  - g. If there are reasonable grounds to believe that the property is directly or indirectly dangerous to health or safety.
3. When property is seized under this section, the seizing agency may:
  - a. Place the property under seal; or
  - b. Remove the property to a place selected and designated by the seizing party.

### **39-30-04. Forfeiture of property.**

1. The following are subject to forfeiture unless obtained by theft, fraud, or conspiracy to defraud and the rightful owner is known or can be identified and located:
  - a. Any tool;
  - b. Any implement; or
  - c. Any instrumentality, including any motor vehicle or motor vehicle part, whether owned or unowned by the person from whose possession or control it was seized, which is used or possessed either in violation of section 39-30-02 or to promote or facilitate a violation of section 39-30-02.
2. Any motor vehicle, other conveyance, or motor vehicle part used by any person as a common carrier is subject to forfeiture under this section if the owner or other person in charge of the motor vehicle, other conveyance, or motor vehicle part is a consenting party to a violation of section 39-30-02.
3. Any motor vehicle, motor vehicle part, other conveyance, tool, implement, or instrumentality is not subject to forfeiture under this section by reason of any act or

omission that the owner proves to have been committed or omitted without the owner's knowledge or consent.

4.
  - a. Seizing agencies shall utilize their best efforts to identify any seized motor vehicle or motor vehicle part to determine ownership or the identity of any other person having a right or interest in it. In its reasonable identification and owner location attempts, the seizing agency shall cause the stolen motor vehicle files of all law enforcement agencies to be searched for stolen or wanted information on motor vehicles similar to the seized motor vehicle or consistent with the seized motor vehicle part.
  - b. If a motor vehicle or motor vehicle part has an apparent value in excess of one thousand dollars:
    - (1) The seizing agency shall consult with an expert of the type specified in subsection 4 of section 39-30-01; and
    - (2) The seizing party shall request searches of the on-line and off-line files of the national crime information center and the national automobile theft bureau when files have been searched with negative results.
5. A forfeiture of a motor vehicle, motor vehicle part, or other conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission forming the ground for the forfeiture.
6. Property, described in subsection 1, seized and held for forfeiture, is not subject to replevin and is subject only to the order and judgments of a court of competent jurisdiction hearing the forfeiture proceedings.
7.
  - a. A state's attorney in the county where the seizure occurs shall bring an action for forfeiture in a court of competent jurisdiction. The forfeiture action must be brought within sixty days from the date of seizure except when the state's attorney in the sound exercise of discretion determines that no forfeiture action should be brought because of the rights of property owners, lienholders, or secured creditors, or because of exculpatory, exonerating, or mitigating facts and circumstances.
  - b. The state's attorney shall give notice of the forfeiture proceeding by mailing a copy of the complaint in the forfeiture proceeding to each person whose right, title, or interest is of record maintained in the department of transportation, or any other department of the state, or any other state or territory of the United States, or of the federal government if the property is required to be registered in any such department.
  - c. Notice of the proceeding must be given to any other person as may appear, from the facts and circumstances, to have any right, title, or interest in or to the property.
  - d. The owner of the property, or any person having or claiming right, title, or interest in the property may within sixty days after the mailing of such notice file a verified answer to the complaint and may appear at the hearing on the action for forfeiture.
  - e. The state's attorney must show at a forfeiture hearing, by a preponderance of the evidence, that the property was used in the commission of a violation of section 39-30-02 or was used or possessed to facilitate such violation.

- f. The owner of property may show by a preponderance of the evidence that the owner did not know, and did not have reason to know, that the property was to be used or possessed in the commission of any violation or that any of the exceptions to forfeiture are applicable.
  - g. Unless the state's attorney makes the required showing, the court shall order the property released to the owner. If the state's attorney has made such a showing, the court may order:
    - (1) The property be destroyed by the agency that seized it or some other agency designated by the court;
    - (2) The property be delivered and retained for use by the agency that seized it or some other agency designated by the court; or
    - (3) The property be sold at public sale.
- 8. A copy of a forfeiture order must be filed with the sheriff of the county in which the forfeiture occurs and with each federal or state department with which the property is required to be registered. The order, when filed, constitutes authority for the issuance to the agency to which the property is delivered and retained for use or to any purchaser of the property of a title certificate, registration certificate, or other special certificate as may be required by law considering the condition of the property.
- 9. Proceeds from the sale at public auction, after payment of all reasonable charges and expenses incurred by the agency designated by the court to conduct the sale in storing and selling the property, must be paid to the general fund of the county of seizure.
- 10. No motor vehicle, either seized under section 39-30-03 or forfeited under this section, may be released by the seizing agency or used or sold by an agency designated by the court unless any altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed vehicle identification number is corrected by the issuance and affixing of either assigned or replacement vehicle identification number plates as may be appropriate under laws of this state.
- 11. No motor vehicle part having any altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed vehicle identification number may be disposed of upon forfeiture except by destruction. This subsection does not apply to any motor vehicle part that is assembled with and constitutes part of a motor vehicle.
- 12. No motor vehicle or motor vehicle part may be forfeited under this section solely on the basis that it is unidentifiable. Instead of forfeiture, any seized motor vehicle or motor vehicle part that is unidentifiable must be the subject of a written report sent by the seizing agency to the department of transportation. The report must include a description of the motor vehicle or motor vehicle part, its color, if any, the date, time, and place of its seizure, the name of the person from whose possession or control it was seized, the grounds for its seizure, and the location where it is held or stored.
- 13. When a seized unidentifiable motor vehicle or motor vehicle part has been held for sixty days or more after the notice to the department of transportation specified in subsection 12 has been given, the seizing agency, or its agent, shall cause the motor vehicle or motor vehicle part to be sold at public sale to the highest bidder. Notice of the time and place of sale must be posted in a conspicuous place for at least thirty days prior to the sale on the premises where the motor vehicle or motor vehicle part has been stored.

14. If a seized unidentifiable motor vehicle or motor vehicle part has an apparent value of one thousand dollars or less, the seizing agency shall authorize the disposal of the motor vehicle or motor vehicle part, provided that no such disposition may be made less than sixty days after the date of seizure.
15. The proceeds of the public sale of an unidentifiable motor vehicle or motor vehicle part must be deposited in the general fund of the state or other governmental unit after deduction of any reasonable and necessary towing and storage charges.
16. Seizing agencies shall utilize their best efforts to arrange for the towing and storing of motor vehicles and motor vehicle parts in the most economical manner possible. The owner of a motor vehicle or a motor vehicle part may not be required to pay more than the minimum reasonable costs of towing and storage.
17. A seized motor vehicle or motor vehicle part that is neither forfeited nor unidentifiable must be held subject to the order of the court in which the criminal action is pending or, if a request for its release from such custody is made, until the state's attorney has notified the defendant or the defendant's attorney of such request and both the prosecution and defense have been afforded a reasonable opportunity for an examination of the property to determine its true value and to produce or reproduce, by photographs or other identifying techniques, legally sufficient evidence for introduction at trial or other criminal proceedings. Upon expiration of a reasonable time for the completion of the examination, which may not exceed fourteen days from the date of service upon the defense of the notice of request for return of property, the property must be released to the person making such request after satisfactory proof of the person's entitlement to possession. Notwithstanding the foregoing, upon application by either party with notice to the other, the court may order retention of the property if it determines that retention is necessary in the furtherance of justice.
18. When a seized vehicle is forfeited, restored to its owner, or disposed of as unidentifiable, the seizing agency shall retain a report of the transaction for a period of at least one year from the date of the transaction.
19. When an applicant for a certificate of title or salvage certificate presents to the department of transportation proof that the applicant purchased or acquired a motor vehicle at a public sale conducted pursuant to this section and such fact is attested to by the seizing agency, the department of transportation shall issue a certificate of title, salvage certificate for the motor vehicle upon receipt of the statutory fee, properly executed application for a certificate of title, or other certificate of ownership, and the affidavit of the seizing agency that a state-assigned number was applied for and affixed to the motor vehicle prior to the time that the motor vehicle was released by the seizing agency to the purchaser.

#### **39-30-05. Civil proceedings and remedies.**

1. The attorney general, any state's attorney, or any aggrieved person may institute civil proceedings against any person in any court of competent jurisdiction seeking relief from conduct constituting a violation of any provision of this chapter. If the plaintiff in such a proceeding proves the alleged violation, or its threat, by a preponderance of the evidence, any court of competent jurisdiction after due provision for the rights of innocent persons, shall grant relief by entering any appropriate order or judgment, including:
  - a. Ordering any defendant to be divested of any interest in any property;
  - b. Imposing reasonable restrictions upon the future activities or investments of any defendant, including prohibiting any defendant from engaging in the same type of endeavor as the defendant was engaged in previously;

- c. Ordering the suspension or revocation of a license, permit, or prior approval granted by any public agency or any other public authority;
  - d. Ordering the surrender of the charter of a corporation organized under the laws of the state or the revocation of a certificate authorizing a foreign corporation to conduct business within the state upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct made unlawful by this chapter and that, for the prevention of future criminal conduct, the public interest requires the charter of the corporation be surrendered and the corporation dissolved or the certificate revoked; or
  - e. Ordering the surrender of the certificate of organization of a limited liability company organized under the laws of the state or the revocation of a certificate authorizing a foreign limited liability company to conduct business within the state upon finding that the board of governors or a managerial agent acting on behalf of the limited liability company, in conducting the affairs of the limited liability company, has authorized or engaged in conduct made unlawful by this chapter and that, for the prevention of future criminal conduct, the public interest requires that the certificate of organization of the limited liability company be surrendered and the limited liability company dissolved or the certificate revoked.
- 2. In a proceeding under this section, injunctive relief must be granted in conformity with the principles that govern the granting of relief from injury or threatened injury in other cases, but no showing of special or irreparable injury must be made. Pending final determination of a proceeding under this section, a temporary restraining order or a preliminary injunction may be issued upon a showing of immediate danger of significant injury, including the possibility that any judgment for money damages might be difficult to execute, and, in a proceeding initiated by an aggrieved person, upon the execution of proper bond against injury for an injunction improvidently granted.
  - 3. Any person injured, directly or indirectly, by conduct constituting a violation by any person of section 39-30-02, in addition to any other relief, has a cause of action for threefold the actual damages sustained by the person.
  - 4. A final judgment or decree rendered against the defendant in any civil or criminal proceeding estops the defendant in any subsequent civil action or proceeding brought by any person as to all matters to which the judgment or decree would be an estoppel between the parties to the civil or criminal proceeding.
  - 5. Notwithstanding any other provision of law providing a shorter period of limitations, a civil action under this section may be commenced at any time within five years after the conduct made unlawful under section 39-30-02 terminates or the cause of action accrues or within any longer statutory period that may be applicable. If any action is brought by a state's attorney to punish, prevent, or restrain any activity made unlawful under section 39-30-02, the running of the period of limitations is suspended during the pendency of such action and for two years following its termination.
  - 6. Personal service of any process in any action under this section may be made upon any person outside the state if the person has engaged in any conduct constituting a violation of section 39-30-02 in this state. The person is deemed to have thereby submitted to the jurisdiction of the courts of this state for the purposes of this provision.

7. Obtaining any civil remedy under this section does not preclude obtaining any other civil or criminal remedy under either this chapter or any other provision of law. Civil remedies under this section are supplemental and not mutually exclusive.

**39-30-06. Venue.** A criminal prosecution for any violation may be commenced in any county without regard to place of occurrence.